

### REMARKS

This responds to the Office Action dated January 11, 2006, and the references cited therewith.

No claims are amended or added, and claims 13-25 are canceled; as a result, claims 1-12 and 26-36 are now pending in this application.

#### Claim Objections

The claims were misnumbered and were not in accordance with 37 C.F.R. 1.126. Applicant has amended the claims to comply with 37 C.F.R. 1.126. Applicant respectfully requests withdrawal of these objections.

#### Specification Objections

The specification was objected to due to various informalities. Applicant has amended the specification with replacement paragraphs to overcome this objection. Applicant respectfully requests withdrawal of these objections.

#### Common Ownership

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered to be owned by, or subject to an obligation of assignment to, the same person at the time the invention was made, if the applicants or the applicants' attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. (Official Gazette Notice, 1241 OG 96 (Dec. 26, 2000)). "The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section)." *Id.* (Emphasis added).

Applicants assert that McAuliffe et al. (U.S. Patent Publication 2005/0222660) and the present patent application were owned by, or subject to an obligation of assignment to, the same person at the time that any invention in the present patent application was made.

§103 Rejection of the Claims

Claims 1-5, 7-11 and 26-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McAuliffe et al. (U.S. Published Application No. 2005/0222660) in view of Wessman et al. (U.S. Patent No. 6,952,616) in further view of at least one of Spehr et al. (U.S. Patent No. 6,324,415), Barbec et al. (U.S. Patent No. 6,253,110), Koblish et al. (U.S. Published Application No. 2002/0087208), Schmidt et al. (U.S. Published Application No. 2004/0106959), and Black et al. (U.S. Patent No. 6,981,314). Applicant respectfully traverses.

Applicant respectfully submits, the primary reference, McAuliffe, cannot preclude patentability under 35 USC § 103, because the reference is not prior art with respect to claims 1-5, 7-11 and 26-36. Pursuant to 35 USC § 103(c)(1):

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, *shall not preclude patentability* under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, *owned by the same person or subject to an obligation of assignment to the same person*.

(Emphasis added). Applicant submits that the Office Action appears to apply McAuliffe as 102(e)(1) prior art. According to 35 USC § 102(e), “A person shall be entitled to a patent unless – (e) the invention was described in – (1) an application for patent, published under section 122(b), by another filed in the United state before the invention by the Applicant for patent.” Applicant submits McAuliffe is a published application filed on March 30, 2004, which is prior to the filing date of the present application, April 12, 2004. A copy of the filing receipt for the present application is attached. Further, McAuliffe and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person (Cardiac Pacemakers, Inc., St. Paul, MN (US)). Pursuant to 35 USC § 103(c)(1), because McAuliffe is commonly owned by, or subject to an obligation of assignment to, the same person as the present application, McAuliffe is therefore not prior art with respect to claims 1-5, 7-11 and 26-36 of the present application. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103 basis of rejection of claims 1-5, 7-11 and 26-36.

Reconsideration and allowance of claims 1-5, 7-11 and 26-36 are respectfully requested.

Reservation of Rights

Applicant reserves the right to swear behind any references which are cited in a rejection under 35 U.S.C. §§ 102(a), 102(e), 103/102(a), and 103/102(e). Additionally, Applicant reserves all applicable rights not exercised in connection with this response, including, for example, the right to rebut any tacit or explicit characterization of the references, the right to request a reference when traversing official notice and the right to rebut any asserted motivation for combination. Applicant makes no admission regarding the prior art status of the cited references, regarding them only as being of record in the application.

Allowable Subject Matter

Claims 6 and 12 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant acknowledges the allowability of claims 6 and 12 if rewritten to incorporate the elements of their base claims and any intervening claims, and reserves the right to rewrite claims 6 and 12.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 371-2117 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

PAUL E. ZAREMBO ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 371-2117

Date

3/29/06

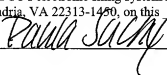
By



Thomas C. Obermark  
Reg. No. 55,506

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of March, 2006.

Name



Signature

